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Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators LODGE, Guthrie, Stennett and,
Representatives CRANE, Armstrong, Gannon

FROM: Katharine Gerrity - Deputy Division Manager

DATE: August 04, 2021

SUBJECT: Temporary Rule

IDAPA 40.00.00 - Notice of Omnibus Rulemaking - Adoption of Temporary Rule - Docket No.
40-0000-2100

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
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IDAPA 40 – COMMISSION ON THE ARTS

DOCKET NO. 40-0000-2100

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 67-5605, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting the temporary rule:

This temporary rulemaking adopts and republishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 40, rules of the Idaho Commission on the Arts:

IDAPA 40

- 40.01.01, *Rules of the Idaho Commission on the Arts.*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), (b), and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. This temporary rule implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of this rule without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by this rule.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Stuart Weiser, Deputy Director, at 208-334-2119.

DATED this 1st day of July, 2021.

Stuart Weiser, Deputy Director
Idaho Commission on the Arts
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P.O. Box 83720
Boise, ID 83720-0008
Phone: 208-334-2119

IDAPA 40 – IDAHO COMMISSION ON THE ARTS

40.01.01 – RULES OF THE IDAHO COMMISSION ON THE ARTS

000. LEGAL AUTHORITY.

Section 67-5605, Idaho Code gives the Commission authority to promulgate rules necessary to the discharge of the Commission's duties. (7-1-21)T

001. SCOPE.

These rules contain the provisions for consideration for any grant or a award under the Commission's programs. (7-1-21)T

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for applicants under the Commission's programs as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code. The Commission provides for internal requests for reconsideration of applications under as described in these rules and program guidelines. (7-1-21)T

004. -- 099. (RESERVED)

100. DEFINITIONS.

01. Applicant. An individual or organization meeting the criteria set forth in Section 202 of these rules, which has submitted an application for a program offered by the Commission. (7-1-21)T

02. Commission. The Idaho Commission on the Arts. (7-1-21)T

03. Program. The categories for the award or grant of funds or recognition by the Commission described in the program guidelines. (7-1-21)T

04. Program Guidelines. The application, review, award, and use criteria for a program approved by the Commission. (7-1-21)T

05. Recipient. An applicant receiving an award or grant under a Commission program. (7-1-21)T

101. -- 199. (RESERVED)

200. PROGRAMS.

The Commission offers programs to stimulate and encourage the study and presentation of the arts. Provisions governing program applications, review, award, and use are set forth in these rules and in the program guidelines located on the Commission's website at <https://arts.idaho.gov/>. (7-1-21)T

201. – 300. (RESERVED)

301. FUNDING LIMITATIONS.

The Commission will not provide funding for the activities, costs, or projects set forth in this section. (7-1-21)T

01. Excluded Applications. The following are excluded from consideration for a grant or award: (7-1-21)T

a. Establishment of or contributions to an endowment; (7-1-21)T

b. Fund-raising projects that do not raise funds for the arts; (7-1-21)T

c. Prizes, scholarships, or free tickets; (7-1-21)T

d. Projects or programs to generate or attract audiences; (7-1-21)T

e. The offsetting of personal or organizational debts; (7-1-21)T

- f.** Activities that are primarily promotional or created for mass distribution including, but not limited to, duplication of compact disks, creation of portfolios, private gallery announcements, self-published books, flyers, brochures, or Internet sites; (7-1-21)T
- g.** Student exhibitions, anthologies, publications, or performances, unless those activities document an arts education grant; (7-1-21)T
- h.** Costs associated with any degree or professional certification including, but not limited to, tuition, fees, or teaching materials; (7-1-21)T
- i.** Projects or activities already completed or documentation of previously completed projects; (7-1-21)T
- j.** Projects that are primarily recreational, vocational, or religious; (7-1-21)T
- k.** Projects restricted to an organization's membership; (7-1-21)T
- l.** Costs for consecutive attendance at annual activities that are routinely within an arts organization's budget including, but not limited to, conferences of the National Assembly of State Arts Agencies, Americans for the Arts, American Folklore Society, or the Western Arts Alliance; (7-1-21)T
- m.** Pageants, festivals, or celebrations unrelated to arts, ethnic, or cultural activities; (7-1-21)T
- n.** Journalism; (7-1-21)T
- o.** Historical or academic documentary film that does not demonstrate significant artistic emphasis, consideration, and distinction; (7-1-21)T
- p.** Scholarly or academic works; (7-1-21)T
- q.** Lobbying expenses or political activities; (7-1-21)T
- r.** Hospitality expenses including, but not limited to, food and drink; (7-1-21)T
- s.** Capital expenditures for individuals; or (7-1-21)T
- t.** Writing intended for youth. (7-1-21)T

302. APPLICANTS.

- 01. Categories of Applicants.** Applicants must fall within one (1) of the following categories: (7-1-21)T

 - a.** An individual artist or arts administrator meeting the criteria set forth in Subsection 302.02, of this rule, who is submitting an application based solely on the applicant's work. (7-1-21)T
 - b.** An organization meeting the criteria set forth in Subsection 302.03 of this rule. (7-1-21)T
 - c.** A collaboration of individual artists represented by an individual. The application must identify and be signed by the primary individual as the applicant, meet the criteria set forth in Subsection 302.02 of this rule, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in this section. (7-1-21)T
- 02. Requirements for Individuals.** If the applicant is an individual, the applicant must: (7-1-21)T

- a. Be a citizen of the United States or a permanent legal resident or a refugee. (7-1-21)T
 - b. Be a resident of the state of Idaho for at least twelve (12) months before the date of the application. (7-1-21)T
 - c. Be over the age of eighteen (18) before the date of the application, unless the applicant is an apprentice. (7-1-21)T
- 03. Requirements for Organizations.** If the applicant is an organization, the applicant must: (7-1-21)T
- a. Have been operating in the state of Idaho for at least twelve (12) months before the date of application. (7-1-21)T
 - b. Be a school, unit of local, county, tribal, or state government, or an organization determined to be tax exempt by the United States Internal Revenue Service whose primary purpose is the production, presentation, or support of the arts. (7-1-21)T
 - i. Unincorporated organizations may submit an application through another tax-exempt organization as its designated fiscal agent. Service as a fiscal agent does not exclude an organization from applying for programs on behalf of the organization serving as a fiscal agent. (7-1-21)T
 - ii. Tax-exempt organizations must have an independent board of directors empowered to formulate policies and be responsible for the governance and administration of the organization, its programs, and its finances. (7-1-21)T
 - c. Compensate artists and arts administrators at no less than the legal minimum wage or in accordance with a written agreement. (7-1-21)T
- 04. Application and Funding Limits.** The program guidelines may include a limit on the number of program applications, the amount of funding, or both for applicants and recipients of grants and awards. (7-1-21)T
- 303. APPLICATIONS.**
- 01. Application Forms and Contents.** The program guidelines will include the application format, length, contents, work samples, and supporting materials requested by the Commission for the applicable program. The Commission may reject applications not satisfying the program guidelines. (7-1-21)T
 - 02. Submission.** Applications shall be delivered to the Commission by the method and due date specified in the program guidelines. (7-1-21)T
 - 03. Ownership and Return of Applications.** Upon submission, applications become the property of the Commission. The return of work samples is at the risk and expense of the applicant. The Commission may require pre-payment of packing and shipping costs for the return of work samples. (7-1-21)T
- 304. DISQUALIFICATION.**
The Commission may disqualify an applicant for any one (1) of the following: (7-1-21)T
- 01. Non-Compliance with Rules or Program Guidelines.** Failure to satisfy the requirements of these rules or the requirements in the program guidelines. (7-1-21)T
 - 02. Application Information, Samples, and Supporting Materials.** Failure to provide information requested on the application form, to submit work samples or other supporting materials requested by these rules or program guidelines, or to sign the application. (7-1-21)T
 - 03. Prior Non-Compliance.** Failure to comply with the terms and conditions of a prior grant or award to the applicant by the Commission. (7-1-21)T

305. PROGRAM GRANTS AND AWARD AMOUNTS.

Program grants and awards are subject to funds availability and may be awarded in any amount at the discretion of the Commission. The Commission may decline to accept applications or to issue an award or grant for any program due to a lack of funding. At the discretion of the Commission, a recipient may receive travel expense reimbursement. (7-1-21)T

306. FINAL REPORTS.

Recipients must submit a final report to the Commission as specified in the program guidelines. (7-1-21)T

307. DELEGATION.

The Commission may delegate its roles, responsibilities, or duties under these rules to Commission staff, artists, or community volunteers including, but not limited to, the review of program applications. (7-1-21)T

308. RECONSIDERATION OF APPLICATIONS.

Applicants may request reconsideration of an application within thirty (30) days of a program grant or award notification issued by the Commission. Requests for reconsideration must be in writing and filed with the executive director of the Commission at the Commission's offices. The Commission considers requests for reconsideration where the applicant demonstrates a misinterpretation or misunderstanding of the application, work samples, or supporting materials. The Commission will not consider a request for reconsideration based upon incomplete or incorrect applications, work samples, or supporting materials. (7-1-21)T

309. -- 999. (RESERVED)